

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE:

B-184896

DATE: AUG 13 1976

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MATTER OF:

John B. Lutton -- Compensation for travel to and
from official duty station

DIGEST:

Employee seeks overtime compensation for average time spent in travel by Government owned boat to and from island prison. Departure of boat was occasionally delayed to allow employees to complete duties. Docking of boat at mainland was occasionally delayed until inmate count verified. Even if delays are considered to be for employer's benefit, they do not transform what is otherwise noncompensable travel time into compensable overtime since delays were only occasional and time involved was de minimis.

This matter involves an appeal by John B. Lutton of the disallowance of his claim for overtime compensation for time spent traveling to and from work by our Transportation and Claims Division (now Claims Division) dated June 26, 1975, Settlement Certificate No. Z-2555742.

Mr. Lutton is an employee of the U.S. Penitentiary, McNeil Island, Steilacoom, Washington. In order to get from Steilacoom on the mainland to the prison on McNeil Island, Mr. Lutton and other prison employees rode a boat operated by the Bureau of Prisons. In addition to the twenty-minute ride on the Bureau of Prisons' shuttle, it took Mr. Lutton ten minutes to walk from the shuttle to his assigned post. Since travel at the end of each eight hour working day was also involved, Mr. Lutton claims overtime compensation at the rate of one hour per working day for the ten years prior to July 30, 1974, the date his claim was received at the General Accounting Office.

The record shows that the departure of the shuttle from the island was occasionally delayed to allow some of the employees to complete their duties prior to the departure of the boat. Furthermore, it was the policy to delay docking of the boat at the mainland until the boat officer was notified that the inmate count at the institution was correct. This would enable the shuttle to return to the island with the correctional officers in the event that an inmate was not accounted for. The procedure occasionally resulted in the employees being held on the boat for a period that exceeded the normal travel time. In response to complaints, additional correctional officers were assigned to verify the inmate count, thus enabling the count to be verified prior to the arrival of the shuttle at the mainland.

Section 5542 of title 5 of the United States Code provides for payment for overtime for work officially ordered or approved in excess of 40 hours in an administrative workweek. However, subsection 5542(b)(2) provides that:

"(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless--

"(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively."

The record does not support a finding that the travel involved work enroute. Even though the occasional delays may have benefited the employer, it does not necessarily follow that the time involved in traveling to and from the work station to the mainland is compensable. The delayed departure of shuttle from the island to allow employees to complete their duties, and the delayed docking to allow verification of the inmate count were only occasional occurrences and in many instances the time involved was de minimis. Mr. Lutton is only claiming compensation for the average travel time involved, not for the time spent during the occasional delays. The delays may reasonably be considered as merely incident to the mode of transportation involved. Even if it is assumed that the time spent during delays was primarily for the benefit of the employer, it does not necessarily follow that the time spent by the employee in going from his work to his home is transformed into compensable overtime.

Previous Comptroller General decisions have firmly established the rule that travel time alone, without the performance of actual duty, outside the regularly scheduled hours of work does not entitle an employee either to regular compensation or overtime compensation for the time so spent. See, for example, B-157036, July 22, 1965; and 40 Comp. Gen. 439 (1961). In 31 Comp. Gen. 362 (1952) we held the rule to be applicable even though the assigned duties were to be performed during normal duty hours and required travel outside the basic workweek.

The principle enunciated above has also been applied by the United States Court of Claims. The Court of Claims in Ahearn v. United States, 142 Ct. Cl. 309 (1958), determined that travel of a Government employee to his permanent duty station via a Government-owned boat was not to be considered work for overtime purposes. The Ahearn Court stated, "We think the time spent in this travel is no more compensable than the time spent by any employee in going from his home to his work." More recently, the Court of Claims, in Ayres v. United States, 186 Ct. Cl. 350 (1962), denied compensation for time spent traveling to and from work on board Government-furnished boats on the basis that the travel involved neither work while traveling nor was it undertaken under hazardous conditions.

In those cases where payment of overtime compensation for travel time has been authorized by decisions of this Office, the circumstances of the travel were so unusual as to warrant the conclusion that such travel was an inherent part of and inseparable from the "work" or "employment" within the meaning of the applicable overtime statute. See, for example, 43 Comp. Gen. 273 (1963). Such unusual circumstances are not present in the instant claim.

Accordingly, the settlement dated June 26, 1975, disallowing Mr. Lutton's claim is sustained.

R.F. KELLER

[Deputy] Comptroller General
of the United States